TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 469

EX PARTE WORCESTER COUNTY NATIONAL BANK OF WORCESTER, APPELLANT

APPEAL FROM THE PROBATE COURT FOR WORCESTER COUNTY, STATE OF MASSACHUSETTS

FILED SEPTEMBER 21, 1928

(33,778)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 7, 1928

[fol. 1]

IN PROBATE COURT OF WORCESTER COUNTY

Paper #1

COMMONWEALTH OF MASSACHUSETTS:

PRECIPE OF TRANSCRIPT OF RECORD—Filed Sept. 18, 1928

To the Honorable the Judges of the Probate Court in and for the County of Worcester:

You are hereby requested to incorporate into the transcript of the record in the matter of the appeal of the Worcester County National Bank of Worcester, to the Supreme Court of the United States, in Case No. 88495, Estate of Julia A. Legnard, which appeal was allowed Sept. 12, 1928—

1. Will of Julia A. Legnard.
2. Petition for Probate of will and decree.
3. Bond.
4. Letter testamentary.
5. First and Final Account with finding of material facts and Report to the Supreme Judicial Court.
6. Rescript and Opinion of the Full Court.
7. Final Decree of Probate Court.
8. Petition for Appeal and its allowance.
8A. Waiver of Notice.
9. Bond for Appeal and its approval.
10. Pracipe.

The appellant deems the above portions of the record to be material and necessary for a decision of said case on appeal, and prays that a transcript of the record, proceedings and papers in this case, as above set forth, duly authenticated, be sent forthwith to the Supreme Court of the United States.

William T. Forbes, Attorney for Worcester County National Bank, Appellant.

[File endorsement omitted.]

Paper #2

[fol. 2] Register's certificate to transcript omitted in printing.

[fol. 3] In Probate Court of Worcester County

Paper #3

Will of Julia A. Legnard—Filed March 17, 1926

Will Allowed Apr. 21, 1926

I, Julia A. Legnard, widow of Solomon Legnard, of Fitchburg in the County of Worcester and Commonwealth of Massachusetts, being of sound and disposing mind and memory, do make, publish and declare this my last will and testament.

First. I direct my Executor hereinafter named to pay all my just debts and funeral expenses as soon as conveniently may be after my decease.

Second. I give and bequeath to my friend, Josephine Small, wife of Patrick Small of Leominster, in said County, three hundred dollars. In case she deceases before me I direct that this three hundred dollars shall become a part of the residue of my estate.

Third. I give and bequeath to my daughter-in-law, M. Evelyn F. Chainey, now wife of Wilfred Chainey of said Leominster, two hundred dollars. In case she deceases before me I direct that this two hundred dollars shall become a part of the residue of my estate.

Fourth. I give and bequeath to the Pastor for the time being of St. Bernard's Church in said Fitchburg, two hundred dollars for the perpetual care of my cemetery lot and of the cemetery lot standing in the name of my father, Patrick J. Brennan in St. Bernard's Cemetery in said Fitchburg.

[fol. 4] Fifth. I give and bequeath to my grandson, Guy C. H. Fletcher, son of William H. Fletcher, deceased, and of my said daughter-in-law M. Evelyn F. Chainey, now wife

of Wilfred Chainey of said Leominster, all my household furniture and my automobile.

Sixth. All the rest, residue and remainder of my estate, real and personal, I give, devise and bequeath to the Fitchburg Bank and Trust Company of said Fitchburg, in said County, in trust nevertheless for the following purposes, namely: to keep invested as I now have my estate invested and upon my said grandson Guy C. H. Fletcher reaching the age of twenty-one years, I direct my said Trustee to pay over and deliver to my said grandson Guy C. H. Fletcher the accrued income and principal of said trust fund, discharged of all trust; and in case said grandson shall not attain the age of twenty-one years, upon his decease to pay over said principal sum and all accrued income to my legal heirs.

And I nominate, constitute and appoint said Fitchburg Bank and Trust Company sole Executor of this my will and request that it be not required to furnish a surety or sureties on its official bond as such Executor.

In testimony whereof I have hereunto set my hand and seal this twelfth day of January in the year one thousand nine hundred and twenty-six.

Julia A. Legnard. (Seal.)

[fol. 5] Signed, sealed, published and declared by the said Julia A. Legnard, as and for her last will and testament, in the presence of us, who in her presence and in the presence of each other and at her request have hereunto set our names as witnesses.

Dora C. McMaster, Eva E. Matson, Thornton K. Ware.

A true copy. Attest: Grace C. Rundlett, Asst. Register.

[fol. 6] In Probate Court of Worcester County

Paper #4

Application to Approve and Allow Will and Order Thereon

[Minors must be so designated, and the names of their guardians, if any, given. The heirs at law and next of kin

may be determined by reference to Chapters 190 and 193 of the General Laws.]

To the Honorable the Judges of the Probate Court in and for the County of Worcester:

Respectfully represents Fitchburg Bank & Trust Co., of Fitchburg, in the County of Worcester, that Julia A. Legnard, who last dwelt in Fitchburg, in said County of Worcester, died on the fourteenth day of March, in the year of our Lord one thousand nine hundred and twenty-six, possessed of goods and estate remaining to be administered, leaving as her only heir at law and next of kin, the person whose name, residence and relationship to the deceased are as follows, viz.: Name: Guy C. H. Fletcher (minor no guardian); residence: Leominster, Mass.; relationship: Grandson; that said deceased left a will, herewith presented, wherein your petitioner is named executor and wherein the testatrix has requested that your petitioner be exempt from giving a surety on their bond.

Wherefore your petitioner prays that said will may be proved and allowed and letters testamentary issued to them, without giving a surety on their official bond, and certifies that the statements herein contained are true to the best of their knowledge and belief.

Dated this seventeenth day of March, A. D. 1926.

Fitchburg Bank & Trust Co. J. C. Andrew, Trust Officer, (Street and No.:) 396 Main St., Fitchburg, Mass.

WORCESTER, ss:

Subscribed and sworn to this 17th day of March, A. D. 1926.

Before me, M. Harold Johnstone, Notary Public. (Seal.)

The undersigned, being all the persons interested in the estate who are of full age and legal capacity, other than creditors, and the guardians of persons interested therein, hereby consent that the above named petitioner be exempt from giving any surety on h- bond, and assent to the foregoing petition, and to the allowance of the will without testimony.

[fol. 7] COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

At a Probate Court Holden at Worcester, in and for said County of Worcester, on the Twenty-first Day of April, in the Year of our Lord One Thousand Nine Hundred and Twenty-six

On the petition of Fitchburg Bank & Trust Company, of Fitchburg, in the County of Worcester, praying that the instrument therewith presented, purporting to be the last will and testament of Julia A. Legnard, late of Fitchburg, in said County of Worcester, deceased, may be proved and allowed, and letters testamentary issued to it, the executor therein named, without giving a surety on its bond, the guardian ad litem having assented, and the heirs at law, next of kin and all other persons interested, having been notified, according to the order of the Court, to appear and show cause, if any they have, against the same; and no party objecting thereto, and it appearing that said instrument is the last will and testament of said deceased and was legally executed, and that said testatrix was, at the time of making the same, of full age and sound mind, and that said petitioner is competent to be appointed to said trust:

It is therefore decreed that said instrument be approved and allowed as the last will and testament of said deceased and letters testamentary be issued to said petitioner, it first giving bond, without sureties, for the due performance of said trust.

Fredk. H. Chamberlain, Judge of Probate Court.

[fol. 8] IN PROBATE COURT OF WORCESTER COUNTY

Paper #5

BOND OF FITCHBURG BANK AND TRUST CO.—Filed Mar. 17, 1926; approved April 21, 1926

Know all men by these presents that we Fitchburg Bank & Trust Co., of Fitchburg, in the County of Worcester, in the Commonwealth of Massachusetts, am holden and stand

firmly bound and obliged unto Frederick H. Chamberlain, Esquire, Judge of the Probate Court in and for the County of Worcester, in the full and just sum of seven thousand five hundred dollars, to be paid to said Judge and his successors in said office; to the true payment whereof we bind ourselves and our successors or assigns, by these presents. Sealed with my seal, and dated the seventeenth day of March, in the year of our Lord one thousand nine hundred and twenty-six.

The condition of this obligation is such that if the above-bounden Fitchburg Bank & Trust Co., executor of the last will and testament of Julia A. Legnard, late of Fitchburg, in said County of Worcester, deceased, testate, shall:

First, make and return to said Probate Court, within three months after their appointment, a true inventory of all the real and personal estate of said deceased which at the time of the making of such inventory shall have come to the possession or knowledge of said executor;

Second, administer according to law and to the will of said deceased all the personal estate of said deceased which may come to the possession of said executor, or of any person for them and also the proceeds of any of the real estate of said deceased that may be sold or mortgaged by said executor; and,

Third, render upon oath, a true account of their administration at least once a year, until their trust is fulfilled, unless they are excused therefrom in any year by said Court, and also render such account at such other times as said Court may order;

Then this obligation to be void, otherwise to remain in full force and virtue.

Fitchburg Bank & Trust Co. J. C. Andrew, Trust Officer.

Signed, sealed and delivered in presence of M. H. Johnstone.

WORCESTER, ss:

April 21, A. D. 1926, examined and approved.
Fred'k H. Chamberlain, Judge of Probate Court.

[Fill out the certificate on the other side]

Fitchburg Bank & Trust Co.

I, James C. Andrew, acting for the within-named executor, declare that, to the best of my knowledge and belief, the estate and effects of the within-named deceased do not exceed in value the following mentioned sums, viz: Real Estate, none; personal estate, $5,000.00.

(Sign.) Fitchburg Bank & Trust Co. James C. Andrew, Trust Officer.

[fol. 9] IN PROBATE COURT OF WORCESTER COUNTY

Paper #6

EXECUTOR'S LETTER

(Seal.)

To Fitchburg Bank & Trust Company, of Fitchburg, in the County of Worcester and Commonwealth aforesaid:

You are appointed executor of the last will and testament of Julia A. Legnard, late of Fitchburg, in said County of Worcester, deceased, testate, which will was proved and allowed on the twenty-first day of April, A. D. 1926, by said Court, and is now of record in this Court;

And you are required to make and return into said Probate Court, within three months from the date hereof, a true inventory of all the real and personal estate of said deceased which at the time of the making of such inventory shall have come to your possession or knowledge;

To administer according to law and to the will of said deceased all the personal estate of said deceased which may come to your possession, or that of any person for you, and also the proceeds of any of the real estate of said deceased that may be sold or mortgaged by you;

To render upon oath, a true account of your administration, at least once a year, until your trust is fulfilled, unless excused therefrom in any year by said Court;

And also, within three months, to cause notice of your appointment to be posted in two or more public places in the city or town in which the deceased last dwelt, or cause the same to be published once in each week for three successive weeks in the Fitchburg Daily Sentinel, a newspaper published in Fitchburg, and return your affidavit of having given such notice, with a copy thereof, to the Probate Court.

Witness Frederick H. Chamberlain, Esquire, Judge of said Court, at Worcester, this twenty-first day of April, in the year of our Lord one thousand nine hundred and twenty-six.

L. E. Felton, Register.

[fol. 10] In Probate Court of Worcester County

Paper #7

G. L., Chap. 206, § 2

Application for Allowance of Executor's First and Final Account and Order Thereon

[Rule IX. "No executor or administrator shall receive any compensation by way of a commission upon the estate by him administered but shall be allowed his reasonable expenses incurred in the execution of his trust, and such compensation for his services as the Court in each case may deem just and reasonable. The account shall contain an itemized statement of the expenses incurred, and shall be accompanied by a statement of the nature of the services rendered and of such other matters as may be necessary to enable the Court to determine what compensation is reasonable."]

The First and Final Account of Fitchburg Bank & Trust Company, executor of the last will and testament of Julia A. Legnard, late of Fitchburg, in the County of Worcester, deceased

This account is for the period beginning with the twenty-first day of April, A. D. 1926, and ending with the ninth

day of February, A. D. 1928. This account is rendered by the Worcester County National Bank of Worcester for said Bank & Trust Company to June 27, 1927, and thereafter as its own account.

Said accountant charges itself with the several amounts received, as stated in Schedule A, herewith exhibited	$5,589 73
And asks to be allowed for sundry payments and charges, as stated in Schedule B, herewith exhibited	5,589 73
Balance as stated in Schedule C, herewith exhibited	None.

Worcester County National Bank of Worcester, by C. A. Evans, Vice-President & Trust Officer, Successor to Fitchburg Bank & Trust Company, Executor. The said Fitchburg Bank & Trust Co. was consolidated with the Merchants National Bank of Worcester under charter of latter & under title of Worcester County National Bank of Worcester. See certificate of Comptroller of Currency, on file.

The undersigned, being all persons interested, having examined the foregoing account, request that the same may be allowed without further notice.

Evelyn M. Fletcher, Guardian for Guy C. H. Fletcher; Evelyn M. Chainey, Worcester County National Bank of Worcester, Trustee, by J. C. Andrew, Asst. Cashier.

WORCESTER, ss:

February 11, 1928.

Then personally appeared C. A. Evans in behalf of the above-named accountant and made oath that the within account is just and true.

Before me,

William T. Forbes, Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS,
Worcester, ss:

At a Probate Court held at Worcester, in said County, on the fourteenth day of June, A. D. 1928, the foregoing account having been presented for allowance, after rescript from the Supreme Judicial Court (Full Court) and pursuant to the terms of said rescript, it appearing that the Worcester County National Bank of Worcester, the accountant and petitioner in this case, has not succeeded the Fitchburg Bank & Trust Company as executor of the will of said testatrix and is not entitled to render this account, this petition for the allowance of the same is hereby dismissed.

Fredk. H. Chamberlain, Judge of Probate Court.

[fol. 11] IN PROBATE COURT OF WORCESTER COUNTY

Paper #8

Estate of JULIA A. LEGNARD

In the Matter of Allowance of First and Final Account

RESERVATION AND REPORT

Finding of Material Facts and Report

The Worcester County National Bank of Worcester, a corporation organized under the laws of the United States and located in the City of Worcester in this Commonwealth, with one branch in the City of Fitchburg, in said Commonwealth, has filed a first and final account in this Court and requests its allowance; the first page of which account is as follows, viz:

The First and Final Account of Fitchburg Bank & Trust Company executor of the last will and testament of Julia A. Legnard late of Fitchburg in the County of Worcester, deceased.

This account is for the period beginning with the twenty-first day of April A. D. 1926, and ending with the ninth day of February A. D. 1928. This account is rendered by the

Worcester County National Bank of Worcester for said Bank & Trust Company, to June 27, 1927 and thereafter as its own account.

Said accountant charges itself with the several amounts received, as stated in Schedule A, herewith exhibited	$5,589 73
And asks to be allowed for sundry payments and charges, as stated in Schedule B, herewith exhibited	5,589 73
Balance as stated in Schedule C, herewith exhibited	$ None

Worcester County National Bank of Worcester, by C. A. Evans, Vice-President & Trust Officer, Successor to Fitchburg Bank & Trust Company. The said Fitchburg Bank & Trust Co. was consolidated with the Merchants National Bank of Worcester under charter of latter & under title of Worcester County National Bank of Worcester. See Certificate of Comptroller of Currency, on file.

The undersigned, being all persons interested, having examined the foregoing account, request that the same may be allowed without further notice.

Evelyn M. Fletcher, Guardian for Guy C. H. Fletcher; Evelyn M. Chainey, Worcester County National Bank of Worcester, Trustee, by J. C. Andrew, Asst. Cashier.

[fol. 12] Worcester, ss: February 11, 1928.

Then personally appeared C. A. Evans in behalf of the above-named accountant and made oath that the within account is just and true.

Before me,

William T. Forbes, Justice of the Peace.

The Fitchburg Bank & Trust Company, a corporation organized under the laws of this Commonwealth, was appointed by this Court executor of the will of Julia A. Legnard, April 21, 1926, and qualified by giving bond approved

on that date, and there has been no change in the administration of her estate since the time of said appointment, so far as appears of record in this Court, unless the consolidation hereinafter set forth, and notice of the same filed in this Court, constitutes a change in said executorship, or gives the petitioner the right to render this account and request its allowance.

The accountant claims that in view of the proceedings hereinafter stated, it is its right and duty to render to this Court the account now presented for allowance and that the same having been assented to by all parties interested, that it should be allowed by this Court.

I find that this account is in proper form for allowance and should be allowed as rendered, if the said Worcester County National Bank, as successor or otherwise, is executor of said will, or has the right to render said account under the laws of the United States.

The Merchants National Bank of Worcester, a national bank organized under the laws of the United States and located in said City of Worcester, and said Fitchburg Bank & Trust Company, located in the same County of Worcester, were consolidated June 27, 1927 under the charter of the Merchants National Bank of Worcester, and under the corporate title of the Worcester County National Bank of Worcester, as appears from the Certificate of the Comptroller of the Currency, a copy of which is as follows:—

Certificate Approving Consolidation of National Bank

Form 1924. Charter No. 7595. Consol. No. 190

Treasury Department, Office of the Comptroller of the Currency, Washington, D. C.

June 27, 1927.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the directors and shareholders of The Merchants National Bank of Worcester, and State of Massachusetts, and the directors and shareholders of Fitchburg Bank and Trust Company, located in the City of Fitchburg, in the County of Worcester, and State of Massachusetts, have complied with all the

provisions of an Act of Congress, entitled "An Act [fol. 13] to provide for the consolidation of National Banking Associations," approved November 7, 1918: as amended February 25, 1927;

Now, Therefore, I, Joseph W. McIntosh, Comptroller of the Currency, do hereby certify that The Merchants National Bank of Worcester and Fitchburg Bank and Trust Company have been consolidated under the charter of The Merchants National Bank of Worcester, and under the corporate title of Worcester County National Bank of Worcester, with capital stock of One Million Eight Hundred and Seventy Five Thousand Dollars ($1,875,000.) and that the consolidation is approved. The consolidated bank has one branch located in the City of Fitchburg.

In Testimony Whereof, witness my hand and Seal of Office this 27th day of June, 1927. "Currency Bureau. Seal of the Comptroller of the Currency, Treasury Department."

(Signed) J. W. McIntosh, Comptroller of the Currency. (Seal.)

A true copy of the record. Attest: Arthur W. Snow, Notary Public. (Seal.)

The accountant has the permission of the Federal Reserve Board, granted pursuant to the provisions of Section 11(k) of the Act of Congress approved December 23, 1913, known as the Federal Reserve Act, to act as executor and has continuously had such permission since March 24, 1915.

There are many estates now being administered in this County by this accountant, the Worcester County National Bank of Worcester, under a claim of right by virtue of said Acts of Congress, where the Fitchburg Bank & Trust Company was appointed administrator, executor, trustee, or in some other fiduciary capacity prior to said consolidation, and where no new appointment of said Worcester County National Bank of Worcester in place of, or as successor to said Fitchburg Bank & Trust Company has been made by decree of this Court.

Without action upon said account, I report the above facts and the question of law involved, for the consideration

and determination of the Full Court, as to whether the petitioner is entitled to render said account.

Fredk. H. Chamberlain, Judge of Probate Court.

Filed February 15, 1928.

A true copy. Attest: Leon E. Felton, Register. Probate Court, Worcester, Massachusetts.

[fol. 14] Paper #9

In Supreme Judicial Court of Massachusetts, at Boston, May 24, 1928

Rescript

In the case of Estate of Julia A. Leonard, in Matter of Allowance of First and Final Account, Worcester County National Bank of Worcester, Accountant, Petitioner, Pending in the Probate Court for the County of Worcester,

Ordered that the register of probate and insolvency in said county make the following entry under said case in the docket of said court; viz: The question reported, namely, "Whether the petitioner is entitled to render said account," is answered in the negative. Probate Court instructed accordingly.

By the Court,

Walter F. Frederick, Clerk.

May 24, 1928.

[fol. 15] Brief Statement of the Grounds and Reason of the Decision

The reasons of the decision are set forth at length in the opinion, filed with the Reporter of Decisions, to which reference is made.

[fol. 15½] Filed June 1, 1928. Attest: Frank L. Dean, Clerk.

Filed June 13, 1928. Recorded Vol. 1076, Page 335.
A true copy. Attest: Carl E. Wahlstein, Ass't Register Probate Court.

[fol. 16] In Supreme Judicial Court of Massachusetts

Paper #10

Commonwealth of Massachusetts:

I, Ethelbert V. Grabill, Reporter of Decisions of the Supreme Judicial Court of the Commonwealth of Massachusetts, hereby certify that the following seventeen (17) pages comprise the opinion of that court, filed with me in the case of Worcester County National Bank, petitioner, decided on the twenty-fourth day of May, 1928.

Ethelbert V. Grabill, Reporter of Decisions.

Opinion

Rugg, C. J.:

This case is reported on a finding of material facts for determination whether the petitioner is entitled to render the account. The pertinent facts are that the Fitchburg Bank & Trust Company, a corporation organized under the laws of this Commonwealth, was appointed on April 21, 1926, by the appropriate court of probate executor of the will of Julia A. Legnard and qualified by giving bond. No change in the administration of this estate appears on the court records. The said Fitchburg Bank & Trust Company, located within our county of Worcester, consolidated with the Merchants National Bank of Worcester, a national banking association organized under the laws of the United States and also located within our county of Worcester, under the corporate title, Worcester County National Bank of Worcester, pursuant to the provisions of the Act of Congress approved on February 25, 1927, c. 91, § 1, 44 U. S. Sts. at Large, Part II, 1224, 1225, amending an Act approved November 7, 1918, c. 209, 40 U. S. Sts. at Large, 1044, by adding at the end of said c. 209 a new section, being § 3 thereof. For convenience, this will be referred to hereafter in this opinion as said § 3. See Act of Congress of May 1, 1886, c. 73, § 2, 24 U. S. Sts. at Large, 18.

The certificate approving the consolidation is dated June 27, 1927. It is assumed that the consolidation took effect on that date.

The first statute purporting to authorize a trust company organized under the laws of the State to consolidate di- [fol. 17] rectly with a national banking association was said § 3. Its provisions, so far as material to the grounds of this decision, are that any bank, defined to include a trust company, incorporated under the laws of any State, "may be consolidated with a national banking association located in the same county * * * under the charter of such national banking association on such terms and conditions as may lawfully be agreed upon" in the manner specified; "and all the rights, franchises, and interests of such State * * * bank so consolidated with a national banking association in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national banking association into which it is consolidated without any deed or other transfer, and the said consolidated national banking association shall hold and enjoy the same and all rights of property, franchises, and interests including the right of succession as trustee, executor, or in any other fiduciary capacity in the same manner and to the same extent as was held and enjoyed by such State * * * bank so consolidated with such national banking association. * * * No such consolidation shall be in contravention of the law of the State under which such bank is incorporated."

First. The first question to be decided is whether consolidation of a Massachusetts trust company with a national banking association is permissible and valid as provided for in said § 3. On this aspect of the case we shall deal only with consolidation in its general features and leave for later consideration the meaning and effect, as declared in said § 3, of such consolidation on the Massachusetts corporation and its fiduciary appointment by the court of probate, and whether those provisions are in contravention of the law of this Commonwealth.

There is no statute of this Commonwealth prohibiting in terms the consolidation of a trust company organized under

the authority of Massachusetts laws with a national bank. We are of opinion that there is no policy of the Commonwealth declared in any statutes on the subject of such consolidation. It is provided by G. L. c. 172, § 44, as amended [fol. 18] by St. 1922, c. 292, that "No trust company shall be merged in or consolidated with another trust company except" upon the terms and in the manner there specified. These statutory words in their context and by the express terms of G. L. c. 172, § 1, refer exclusively to trust companies organized under the laws of this Commonwealth. These statutory words, although they do not authorize, do not prohibit a consolidation of a Massachusetts trust company with a national bank. Further provisions of said § 44 as amended touching "the sale or exchange of all the property and assets, including the good will and corporate franchise, of a trust company" have no relevancy to the facts disclosed on this record because a consolidation such as here is in issue is not "a sale or exchange" of the property and assets of the trust company. The final sentence of said § 44 as amended is thus: "The charter of a trust company the business of which shall, on or after July first, nineteen hundred and twenty-two, be consolidated or merged with, or absorbed by, another bank or trust company, shall be void except for the purpose of discharging existing obligations and liabilities." It is to be observed that here for the first time occur the words "another bank" coupled with the words "trust company." The use of the word "bank" in this connection, in a chapter devoted solely to the subject of trust companies, bears some indication of legislative recognition of the fact that a consolidation or merger of a trust company with a "bank" was contemplated. By said c. 172 and by G. L. c. 167, a bank is a different institution from a trust company. So far as we are aware or have been able to discover, there is no statute of this Commonwealth authorizing any State bank, as distinguished from a trust company, to consolidate with a trust company; and there is no statute, except said § 44 as amended, authorizing a trust company to consolidate with another institution transacting any branch of the business of banking. The use of the word "bank" in the context shown in said § 44 as amended

renders it impracticable to hold rightly that consolidation of a trust company with a national bank, subject to the limitation expressed in the final sentence of said § 44 as [fol. 19] amended, is contrary to declared legislative policy even though at the time of the enactment of St. 1922, c. 292, no such direct consolidation was permissible under any Act of Congress. An indirect and round-about method of consolidation theretofore was possible by means (1) of the conversion of a trust company into a national bank under U. S. Rev. Sts. § 5154, and (2) of the consolidation of the national bank thus established with another national bank under the charter of such other national bank under Act of Congress of November 7, 1918, c. 209, 40 U. S. Sts. at Large, 1043. That method has been followed in some instances, as shown by the record in Commonwealth Atlantic National Bank of Boston, petitioner, 249 Mass. 440. The Legislature may have had that method of accomplishing the result in mind in phrasing the final sentence of said c. 292. It would have been simple for the Legislature to have declared that such consolidation or merger was in contravention of the policy of the Commonwealth if such had been its purpose.

There is no provision in the statutes of this Commonwealth authorizing or recognizing the consolidation of a trust company or bank organized under such statutes with a national banking association. Formerly there were statutes respecting the conversion of a State bank into a national bank under Act of Congress of June 3, 1864, c. 106, § 44, 13 U. S. Sts. at Large, 112, now U. S. Rev. Sts. § 5154. See St. 1863, c. 244, St. 1864, c. 190. Of course these early statutes never were applicable to a consolidation of a State bank with a national bank, which appears first to have been authorized by said § 3, (44 U. S. Sts. at Large, Part II, 1225, 1226). But those early statutes were repealed by Pub. Sts. c. 224. It is quite possible that that repeal came about because such statutes were thought to be unnecessary in view of the decision in Casey v. Galli, 94 U. S. 673, to the effect that no enabling State statute was required to accomplish such change and conversion.

This review of the statutes of this Commonwealth shows that there has been no exercise of whatever power may reside in the State to declare a general policy against the

consolidation of a State trust company with a national [fol. 20] bank. Thereby in effect that field is left open to the exercise by Congress of whatever power it possesses over that subject. Commonwealth v. Nickerson, 236 Mass. 281, 292, 293. Such consolidation, however, must be subject to the limitation already quoted from the final sentence of St. 1922, c. 292, amending G. L. c. 172, § 44.

It follows that, speaking broadly, the consolidation of a Massachusetts trust company with a national banking association is not "in contravention of the law" of this Commonwealth, subject to the limitation in St. 1922, c. 292, amending G. L. c. 172, § 44, and to the limitations hereinafter stated.

The question was directly raised in Casey v. Galli, 94 U. S. 673, whether a State bank could change its organization into that of a national banking association without any authority given by the State law in its charter or otherwise to make the change. It was said at page 678, "No authority from the State was necessary to enable the bank so to change its organization. The option to do that was given by the forty fourth section of the Banking Act of Congress, 13 Stat. 112. [U. S. Rev. Sts. § 5154.] The power there conferred was ample, and its validity cannot be doubted. The act is silent as to any assent or permission by the State. It was as competent for Congress to authorize the transmutation as to create such institutions originally." We are unable to perceive any sound distinction between the power of Congress to authorize the conversion of a State bank into a national bank and its power to authorize the consolidation of a State bank with a national bank under the charter of the national bank. If no State legislation was necessary to accomplish such conversion, it seems to us that no State legislation is necessary to accomplish such consolidation. Relying upon the authority of Casey v. Galli, 94 U. S. 673, we are of opinion that in general consolidation of a Massachusetts trust company with a national banking association as prescribed in the Act of Congress of February 25, 1927, c. 191, § 3, is permissible and valid.

Second. The next question to be determined is what is the legal effect of such consolidation upon the trust com-

[fol. 21] pany and upon the national bank. The words of said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226) are explicit to the point that the consolidation shall be "under the charter of such national banking association." This of itself is clear indication of intent that the State trust company shall not continue as a corporation in combination with the national bank. The words of St. 1922, c. 292, amending G. L. c. 172, § 44, are equally explicit that upon any consolidation of a Massachusetts trust company, whether with a bank or another trust company, its charter "shall be void except for the purpose of discharging existing obligations and liabilities." The statutes of this Commonwealth upon the subject of a trust company, owing its creation and existence exclusively to those statutes, must be valid and binding to this extent. The later provision of said § 3 that there shall be transferred to the national banking association and be held by it among other things the "franchise" of the State bank, cannot mean its right to be a corporation. The right to transfer franchise powers of a corporation organized under the laws of one sovereignty to a corporation organized under the laws of a different sovereignty is extraordinary. It cannot be implied in the absence of explicit statutory enactment to that end. There is no such provision in the statutes of this Commonwealth. Any other conclusion would be in contravention of the laws of this Commonwealth. It is manifest from the terms of said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226) and from the terms of said St. 1922, c. 292, that the charter of the trust company here in question became void on the consolidation (except for purposes not here material), and that the only corporation now operative is the national bank. The trust company as a Massachusetts corporation has ceased to be an institution capable of transacting business. The national bank existing before the consolidation has continued to exercise all its functions without alteration or modification under the same charter since the consolidation as before. The consolidation contemplated by said § 3 is an absorption of the State bank with all its assets by the national banking association, which retains its corporate identity. Its provisions differ in this particular from many statutes authorizing the consolidation of corporaions, which effect

[fol. 22] the extinguishment of the constituent corporations and the establishment of a new corporation.

There is no requirement in said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226) or elsewhere, so far as we can discover, that the comptroller of the currency must issue a certificate of consolidation, although there is an implication in the provision touching dissenting stockholders (not herein quoted) that he must approve such consolidation. The certificate printed in the record cannot be thought to be more than the signification of approval of the consolidation by the comptroller of the currency. It is in no sense a charter. By the very terms of said § 3, the consolidation is "under the charter of such national banking association," that is, its preëxisting charter, upon which said § 3 casts no invalidity, but which continues unimpaired, and is the only legal basis for the national bank after the consolidation. See U. S. Rev. Sts. § 5169; Act of Congress of July 12, 1882, c. 290, § 2, 22 U. S. Sts. at Large, 162; Act of Congress of April 12, 1902, c. 503, 32 U. S. Sts. at Large, 102.

The result is that the trust company chartered by this Commonwealth has gone out of existence; all its property of every name and nature has gone into the possession and has become the property of the national bank, and the national bank continues its existence and identity under its original charter. The trust company has lost its identity and its assets have become those of the national banking association. The latter is not a newly created organization but an enlargement of the continuously existing national bank. Tomlinson v. Branch, 15 Wall. 460. Central Railroad & Banking Co. v. Georgia, 92 U. S. 665. Yazoo & Mississippi Valley Railway v. Adams, 180 U. S. 1, 19-22. Worcester Bank & Trust Co., petitioner, (Adv. Sh. (1928) 1195.)

In view of this legal effect, in its general aspects, of the consolidation of the trust company with the national bank upon the trust company as a corporation, it must follow that its identity as a fiduciary appointed by the court of probate has not been continued in the national bank, but has been extinguished. Doubtless in many respects it may [fol. 23] be said that the identity of corporations consolidated under the provisions of law is continued in the ab-

sorbing corporation. That is true commonly as to contract obligations. Proprietors of Locks & Canals on Merrimack River v. Boston & Maine Railroad, 245 Mass. 52, 59, and cases cited. Atlantic National Bank v. Harris, 118 Mass. 147. Iowa Light, Heat & Power Co. v. First National Bank of Boston, 250 Mass. 353, 354. In discussing questions of that nature broad language may be found in opinions of courts. In Michigan Ins. Bank v. Eldred, 143 U. S. 293, 300, occur these words by Mr. Justice Gray: "the plaintiff corporation, having been originally created by the laws of Michigan, had, in accordance with the National Banking Act, become a national bank, and its name had been changed accordingly, without affecting its identity, or its right to sue upon obligations or liabilities incurred to it by its former name. Act of June 3, 1864, c. 106, § 44; 13 Stat. 112; Rev. Stat. § 5154; Metropolitan Bank v. Claggett, 141 U. S. 520." In the latter case it was said at page 527: "the change or conversion" of a State bank into a national bank under U. S. Rev. Sts. § 5154, "did not 'close its business of banking' nor destroy its identity or its corporate existence, but simply resulted in a continuation of the same body with the same officers and stockholders, the same property, assets, and banking business under a changed jurisdiction; that it remained one and the same bank." It may be noted that scarcely any of the facts thus enumerated as decisive exist in the case at bar with reference to the trust company and the national bank. Plainly the conversion of a State bank into a national bank under consideration in the two cases last cited differs in essential particulars from a consolidation such as is disclosed on this record. The expressions just quoted were used in judgments touching contract litigation, and must be interpreted as applicable to the facts then before the court. Such expressions and decisions occurring in different connections and rendered upon different issues cannot rightly be stretched to include a situation like that here presented. Cohens v. Virginia, 6 Wheat. 264, 399. Swan v. Justices of the Superior Court, 222 Mass. 542, 545, and cases collected. [fol. 24] They are not applicable to the peculiar positions of trust like executor, administrator, and other fiduciaries, established under the law and practice of this Commonwealth. It is the duty of a court under our jurisdiction,

before appointing an executor, administrator, trustee or other fiduciary, to inquire carefully as to his character, integrity, soundness of judgment and general capacity, and to make the appointment only after a favorable finding on these points. That duty of inquiry is just as imperative with respect to a trust company or national bank as with respect to an individual.

The suggestion in the brief of the petitioner that, "strictly speaking, a court cannot appoint an executor," is without merit in this connection. Probate courts are required to find that a person named as executor "is legally competent and a suitable person" before issuing letters testamentary. G. L. c. 192, § 4. The form of letter testamentary in common use by probate courts and doubtless approved by this court under G. L. c. 215, § 30, begins with the assertion, after naming the person, "You are appointed executor." He has no legal authority as executor until so appointed. Manifestly the executor is appointed by the court as the result of a judicial decision.

It is quite possible that none of the officers of the Fitchburg Bank & Trust Company, in reliance upon whose character, sagacity and skill the original appointment as executor was made in the case at bar, continues as officers of the national banking association. The stockholders hardly can be the same. Its general policy of business and trust administration may have been entirely altered. Its reputation with respect to these matters may have changed radically as a consequence of the consolidation. The court has had no opportunity to pass upon these essential questions. The failure of several trust companies and at least one national banking association in this Commonwealth within recent years accentuates the importance of such judicial examination of trust companies and national banks before appointing them to positions of trust of this nature in the administration of estates.

It is to be observed that there are no statutory words in said § 3 to the effect that the identity of the State bank as a [fol. 25] fiduciary by appointment of a court is continued in the national bank with which it has been consolidated. The absence of express words in said § 3 declaring the preservation of the identity of the State bank perhaps may not be of decisive significance. If it be assumed that it was

intended by said § 3 to preserve that identity, that result is not accomplished in view of what has of necessity happened in making the consolidation in compliance with said section and already described in detail. Identity with the trust company in the sense in which that word is used under our system of judicial appointments of fiduciaries cannot be attributed to the national bank into which the trust company has been consolidated. The identity of the trust company as such fiduciary cannot be regarded as so continued in view of the express provisions of St. 1922, c. 292, to the effect that on consolidation its charter shall be void. That its identity cannot be held to be thus continued seems to us clear in view of what has been said earlier in this opinion.

The trust arising from appointments to such positions as executor, administrator and the like is highly personal. It is not commercial. It is not contractual. It is not a property right. It involves no pecuniary interest on the part of the fiduciary. Ensign v. Faxon, 224 Mass. 145. Commonwealth-Atlantic National Bank of Boston, petitioner, 249 Mass. 440, 445. Wilkinson v. McIntyre, 254 Mass. 325, 330. A strictly confidential relationship of this nature cannot survive such a transmutation as is wrought by the consolidation of a State bank with a national banking association under the charter of the latter in accordance with the terms of said § 3. To treat the national banking association into which the State trust company has been consolidated as preserving the identity of the trust company in this particular would be contrary to the juridical conception and practice touching the appointment of such fiduciaries under the law of this Commonwealth.

Third. The final question for determination is whether the provision of said § 3 (U. S. Sts. at Large, Part II, 1225, 1226) that the national banking association shall hold and enjoy "the right of succession as trustee, executor, or in [fol. 26] any other fiduciary capacity in the same manner and to the same extent as was held and enjoyed by such State • • • bank," is valid and binding upon the courts of this Commonwealth. This question divides itself into three parts: (1) What do these words mean? (2) Are they in contravention of the law of this Commonwealth? (3) Do they violate any provision of the Constitution?

(1) The words just quoted from said § 3 seem to us to carry the unmistakable import that in case of consolidation the national banking association shall possess and enjoy all appointments as executor, administrator, or other fiduciary held by the absorbed State bank by virtue of any decree of any court without further action by the appointing court, as fully and completely as if it were the State bank, or as if it had originally been appointed to these fiduciary positions by the court. As has already been shown, the trust company has gone out of existence and its charter has become void "except for the purpose of discharging existing obligations and liabilities." The national banking association is a different corporation from the trust company. But under the words of said § 3, resort to the judicial functions of the Probate Court for any purpose in these changed circumstances is unnecessary. No new appointment by the Probate Court is required or contemplated. No notice of the change need be given to that court. The interposition of that court for any purpose would be superfluous.

The original appointment is to continue wholly unaffected by the fact that the State bank, in the case at bar the trust company, whose credit, standing and competency formed the basis of the judicial inquiry and action culminating in that appointment, has ceased to be, and another and different corporation whose credit, standing and competency have never been the subject of judicial inquiry for this purpose, is to act in its place as executor. This seems to us to be the plain meaning of the words of said § 3 now under consideration construed according to the common and approved usage of the language.

(2) The next part of the final question is whether the provisions of said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226), having the meaning just stated, are "in contraven-[fol. 27] tion of the law" of this Commonwealth under which the trust company was organized. That section, according to its plain interpretation, has a signal force and effect in its application to appointment of fiduciaries by courts of this Commonwealth. That section requires the courts of this Commonwealth to recognize and accept, with-

out inquiry or hearing, as fiduciary in place of a State trust company now gone out of existence, which was appointed by the court by solemn decree, a national bank which is a different corporation established under the laws of a different sovereignty, possessed of different powers, owing allegiance to a different jurisdiction, governed by different laws, subject to different governmental supervision, and controlled by different officers. That requirement relates to a subject in which all beneficiaries and others interested in estates of deceased persons and in the administration of trusts and of other funds for the benefit of minors, insane persons, and the aged and infirm under conservatorship have a vital interest. That requirement relates to a trust estate in process of settlement under the direction of the court. That requirement forecloses a hearing, where the interested parties may present their contentions in an orderly way and where a judicial decision may be rendered. That requirement is made by a pure legislative declaration without more. This touches the very foundations of judicial administration.

It is provided in art. 30 of the Declaration of Rights of this Commonwealth that, "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men." That principal is thoroughly embedded in the governmental principles of this Commonwealth on which law itself is founded. It often has been referred to in judicial decisions. It has been many times applied to the several departments of government. It is of the very fiber of our institutions. As illustrative of other adjudications, reference may be made to Case of Supervisors of Election, 114 Mass. 247, [fol. 28] Boston v. Chelsea, 212 Mass. 127, Dinan v. Swig, 237 Mass. 619,623, Cosmopolitan Trust Co. v. Mitchll, 242 264, 296, Opinion of the Justices, 251 Mass. 569, 615, Sheehan, petitioner, 254 Mass. 342, 345, Opinion of the Justices, 237 Mass. 619, 623, Cosmopolitan Trust Co. v. Mitchell, 242 Mass. 95, 115, 116. Of course that principle has never been and cannot be questioned in the administration of the gov-

ernment of this Commonwealth. The only difficulty that ever arises is in its proper application. The case at bar in respect to the clause of said § 3 now under consideration seems to us to present no difficulty in the application of that principle. To accept that clause as binding would be directly contrary to the spirit and implications of said art. 30. It would be opposed to the underlying notions of the civil society founded upon the Constitution of this Commonwealth. The prohibition on the judiciary against surrendering its powers in compliance with legislative mandate is as imperative as that against exercising the executive or legislative powers. It is of no consequence in this connection from what legislative body the interference with the judicial function may come. Of course we do not decide that art. 30 of the Declaration of Rights can override the Constitution of the United States or any Act of the Congress enacted pursuant to that instrument. Opinion of the Justices, 234 Mass. 597, 607, and cases cited; 237 Mass. 591, 595. Florida v. Mellon, 273 U. S. 12, 17. We are now dealing only with the point whether this provision of said § 3 is "in contravention of the law" of this Commonwealth.

We are therefore of opinion that it is "in contravention of the law" of this Commonwealth in a fundamental sense for the courts to be compelled, in compliance with the mandate of a legislative body, to recognize as a fiduciary a different corporation from the corporation appointed such fiduciary, simply because, without judicial proceedings and by mere act of the stockholders and officers (who may now have ceased to be such) approved by an executive government official, the corporation appointed such fiduciary has been consolidated with it, without any judicial determination as to the fitness of such different corporation to per- [fol. 29] form the duties of fiduciary.

(3) The last part of the final question we have to decide is whether this provision of said § 3 as thus interpreted is within any power conferred upon the Congress by the Constitution of the United States and, if not within such power, whether it is separable from the rest of the act. Plainly the Congress has ample legislative power over national banks. It may require courts of the several States to appoint national banks as fiduciaries upon the same terms as domestic banks are appointed. First National Bank of Bay City v.

Fellows, 244 U. S. 416. Burnes National Bank of St. Joseph v. Duncan, 265 U. S. 17. This court of course recognizes the ample jurisdiction of the Congress to confer upon national banks power to compete with State banks as declared in these two adjudications. Commonwealth-Atlantic National Bank of Boston, petitioner, 249 Mass. 440, 442. This provision of said § 3 goes far beyond that. It does not declare a general policy for the State courts to pursue in performing their judicial functions with respect to national banks. It altogether abolishes the judicial function with respect to a subject essentially judicial in its nature—viz., who shall act as fiduciaries under judicial appointment—and substitutes for that judicial function a legislative determination. The question is not whether the State court should hold a hearing and determine, in accordance with its settled procedure and the guiding federal statute requiring the appointment of national banks upon equal terms with domestic trust companies, whether the particular national bank ought to be appointed to the fiduciary position. It is indubitable that that ought to be done upon appropriate proceedings. I would be done in this Commonwealth according to its most enlightened standards of judicial conduct. But the question is whether the State court must accept and recognize this national bank, never a party to any of its proceedings and unknown on its records, as its fiduciary, not as a result of judicial determination but as a result of the mandate of Congress. To recognize such a mandate in substance and effect is to approve the exercise of a judicial function by a legislative body. We understand that it has [fol. 39] always been held by the Supreme Court of the United States that the Congress is prohibited by the Constitution of the United States from exercising judicial functions. Kilbourn v. Thompson, 103 U. S. 168, 190, 191, Ocampo v. United States, 234 U. S. 91, 100. Ex Parte Grossman, 267 U. S. 87, 119, 120. Cosmopolitan Trust Co. v. Mitchell, 242 Mass. 95, 115, 116. Springer v. Government of the Philippine Islands, decided by the United States Supreme Court on May 14, 1928.

This mandate of said § 3 not only is addressed to a judicial function but it relates to a subject outside the field of Congressional legislation. It seems to us not open to debate that the general subject of the settlement of estates of

deceased persons and the appointment of fiduciaries to administer trusts is within the exclusive jurisdiction of the State. No clause of the Constitution of the United States confers any such power upon the Congress. Art. 1, § 8. That power is not forbidden to the States. Art. 1, § 10. It is a matter purely of State rather than of national cognizance. It falls among the powers reserved to the States by art. 10 of the Amendments. There is nothing contrary to this in First National Bank of Bay City v. Fellows, 244 U. S. 416, and Burnes National Bank of St. Joseph v. Duncan, 265 U. S. 17. Those decisions go no further than to hold that the Congress may require that the several States shall not discriminate against national banks in favor of State banks in the field of competitive business.

The consequence is inevitable, in our opinion, that the Congress has no power by simple legislative fiat and without provision for judicial inquiry and decision to make it imperative upon any court of this Commonwealth to recognize the present accountant, a corporation hitherto an utter stranger to its proceedings and records, as the officer and appointee of such court in a highly fiduciary capacity. We feel compelled to reach the conclusion that this clause of said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226), here under discussion, is unconstitutional.

This decision, while not required by Commonwealth-Atlantic National Bank of Boston, petitioner, 249 Mass. 440, and Commonwealth-Atlantic National Bank of Boston, petitioner, 261 Mass. 217, is in harmony with the principles on [fol. 31] which those cases rest.

We are of opinion, however, that this clause is not the dominant feature of said § 3, but is subsidiary and incidental to its main object, which is to authorize the consolidation of State banks with national banks, that this clause is separable and distinct, that the rest of the section may stand independently, and that there is no such connection between the valid and invalid parts as to support the view that the Congress would not have enacted the valid part without the other. That has been held in Worcester County National Bank of Worcester, petitioner, Adv. Sh. (1928) 1195, this day decided. It is within the principle of numerous decisions. International Text Book Co. v. Pigg, 217 U. S. 91, 113. Kellar v. Potomac Electric Power Co.

261 U. S. 428, 444. Lawton Spinning Co. v. Commonwealth, 232 Mass. 28, 32. Ashley v. Three Justices of the Superior Court, 228 Mass. 63, 81, and cases there collected. The final determination based upon all branches of this judgment is that said § 3 (44 U. S. Sts. at Large, Part II, 1225, 1226), as we have interpreted its meaning and with the clause requiring the courts of this Commonwealth to recognize the national bank as holding without new appointment the fiduciary position held by the trust company stricken down as unconstitutional, and the consolidation here in question made pursuant to the terms of said Act of Congress, are not in contravention of the law of this Commonwealth.

It is possible that the case at bar might be disposed of with the same result on the ground that, when the will of the testator was allowed and the trust company appointed executor, there was no law permitting a trust company to consolidate directly with a national bank, and that therefore the Act of Congress under which this consolidation took place, having been enacted subsequently to the appointment of the trust company as executor, cannot be operative to affect the decree of the court previously entered and the rights of the beneficiaries of the estate of the testatrix under such decree. See Wright v. Wright, 225 N. Y. 329, 336, 337. This point has not been argued. We have not con- [fol. 32] sidered it because it seems preferable to decide the case on the grounds already stated.

The result is that The Worcester County National Bank of Worcester, the accountant and petitioner in the case at bar, has not succeeded Fitchburg Bank & Trust Company as executor of the will of the testatrix and is not entitled to render an account as such executor. It can account only de son tort. The case upon this point is governed by Commonwealth Atlantic National Bank of Boston, petitioner, 261 Mass. 217. The question reported, namely, "whether the petitioner is entitled to render said account," is answered in the negative.

Probate Court instructed accordingly.

[fol. 33] In Probate Court of Worcester County

Paper #11

In re Estate of Julia A. Legnard, Worcester County National Bank of Worcester, a Corporation, Appellant

Petition for Appeal from the Final Decree of the Probate Court, Worcester, Massachusetts, Pursuant to a Rescript from the Supreme Judicial Court of the Commonwealth of Massachusetts, Assignment of Errors, and Prayer for Reversal

Petition for Appeal and Order Allowing Same

To the Honorable the First Presiding Judge of the Probate Court in and for the County of Worcester, Commonwealth of Massachusetts:

Represents the Worcester County National Bank of Worcester, a corporation organized under the laws of the United States and located in Worcester, in the County of Worcester and Commonwealth of Massachusetts, that it is aggrieved by the final decree of the Probate Court held at Worcester, in said County of Worcester, on the 14th day of June, A. D. 1928, whereby said Court, after a rescript from the Supreme Judicial Court of said Commonwealth, being the highest Court of the law or equity in said Commonwealth, and pursuant to said rescript, entered final judgment against said Worcester County National Bank of Worcester in the above-entitled cause, and it hereby gives notice that it claims an appeal from said decree to the Su-[fol. 34] preme Court of the United States, and hereby prays that its appeal be allowed and for an order fixing the amount of the bond thereon.

Assignment of Errors

The said Worcester County National Bank of Worcester, appellant, assigns the following errors in the record and proceedings in the said case, to wit:

I. That the Supreme Judicial Court of the Commonwealth of Massachusetts erred in its answer to the question

reserved by the Probate Court of Worcester County, and holding certain provisions of Section 3, Chapter 191, Acts of Congress of February 25, 1927, to be unconstitutional, and the Probate Court for the County of Worcester erred in obeying the rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts and in rendering judgment in accordance therewith.

2. That the Supreme Judicial Court of the Commonwealth of Massachusetts erred in answering the reservation and report by F. H. Chamberlain, J. upon a petition for the allowance of the account in the above-entitled action in the negative, and the Probate Court for the County of Worcester erred in obeying the rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts and in rendering judgment in accordance therewith.

3. That the Supreme Judicial Court of the Commonwealth of Massachusetts erred in ordering that the Register of Probate and Insolvency in the County of Worcester [fol. 35] make the following entry in the above-entitled case, to-wit:

"The question reported, namely, "Whether the petitioner is entitled to render said account," is answered in the negative. Probate Court instructed accordingly."

And the Probate Court for the County of Worcester erred in obeying the rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts and in rendering judgment in accordance therewith.

4. That the Probate Court for the County of Worcester, Commonwealth of Massachusetts, erred in making the following entry in the above-entitled cause, to-wit:

"The foregoing account having been presented for allowance, after rescript from the Supreme Judicial Court (Full Court) and pursuant to the terms of said rescript, it appearing that the Worcester County National Bank of Worcester, the accountant and petitioner in this case, has not succeeded the Fitchburg Bank & Trust Company as executor of the will of said testatrix and is not entitled to render this account, this petition for the allowance of the same is hereby dismissed.

Fredk. H. Chamberlain, Judge of Probate Court."

5. That the decision in the above-entitled cause was upon the question of the validity of a statute of the United States on the ground of its being repugnant to the Constitution [fol. 36] of the United States, and the decision is against its validity.

Prayer for Reversal

For which errors the appellant, the Worcester County National Bank of Worcester, prays that the errors so complained of may be corrected and that the said judgment of the Probate Court of Worcester County, Commonwealth of Massachusetts, dated June 14, 1928, in the above-entitled cause, be reversed and a judgment rendered in favor of said appellant, and for costs.

Newton D. Baker. Newton D. Baker, Counsel for Appellant. William T. Forbes. William T. Forbes, of Counsel.

Worcester, Mass., Sept. 12, 1928.

The foregoing appeal is hereby allowed, upon the filing of bond, without surety, in the sum of One Hundred Dollars.

Fred'k H. Chamberlain, First Presiding Judge of Probate Court for Worcester County, Commonwealth of Massachusetts.

[Endorsed:] Case 88495. Supreme Court of the United States, October Term, 1928. No. —. Worcester County National Bank of Worcester, a corporation, appellant. In re estate of Julia A. Legnard. Petition for appeal from the final decree of the Probate Court, Worcester, Massachusetts, pursuant to a rescript from the Supreme Judicial Court of the Commonwealth of Massachusetts, assignment of errors, and prayer for reversal. Filed Sept. 12, 1928. Allowed Sept. 12, 1928. A true copy. Attest: Grace C. Rundlett, Asst. Register. (Seal Probate Court, Worcester, Massachusetts.)

[fols. 37 & 38] Paper #12

Bond on appeal for $100.00, approved and filed September 12, 1928, omitted in printing.

[fol. 39] In Probate Court of Worcester County

Paper #13

In re Estate of Julia A. Leonard

Appeal to Supreme Court of the United States

Waiver of Notice—Filed Sept. 12, 1928

I, Frederick H. Chamberlain, First Judge of the Probate Court, hereby waive notice of the present and all future proceedings in the above-named case.

Fredk. H. Chamberlain.

[fol. 40] In Probate Court of Worcester County

Paper #14

In re Estate of Julia A. Leonard, Worcester County National Bank of Worcester, a Corporation, Appellant

Petition for Appeal from the Final Decree of the Probate Court, Worcester, Massachusetts, Pursuant to a Rescript from the Supreme Judicial Court of the Commonwealth of Massachusetts, Assignment of Errors, and Prayer for Reversal

Waiver of Notice and Assent to Bond.

The Attorney General of the Commonwealth of Massachusetts takes notice of the above entitled Petition and Appeal and does not wish to be heard thereon, and approves of a bond of said Bank as appellant without sureties, for the sum of One Hundred Dollars ($100.00).

Joseph E. Warner, Attorney General.

A true copy. Attest: Carl E. Wahlstrom, Asst. Register. (Seal) Probate Court, Worcester, Massachusetts.

[fol. 41] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed—Filed Sept. 25, 1928

Comes now the Appellant in the above entitled cause and adopts its Assignment of Errors as its statement of the points to be relied upon.

And the Appellant further states that only the following parts of the record as filed in this case need be printed by the Court for the hearing of the case, to wit:

Title of Paper	Paper number
Precipe for transcript of record	1
Certification of Record	2
Will of Julia A. Legnard	3
Application of Fitchburg Bank and Trust Company to approve and allow will and order of Judge of Probate Court	4
Bond of Fitchburg Bank and Trust Company, approval by judge of Probate Court and certification by James C. Andrew, Trust Officer	5
Executor's Letter	6
Application of Fitchburg Bank and Trust Company for allowance of executor's first and final account and order of Judge of Probate Court	7
Reservation and report of Probate Court	8
Rescript from Supreme Judicial Court of Massachusetts	9
Petition for appeal from the final decree of the Probate Court of Worcester County, Assignment of Errors and prayer for reversal	11
Bond of Worcester County National Bank	12
Waiver of notice of Honorable Frederick H. Chamberlain, Judge of Probate Court	13
Waiver of notice of Honorable Joseph E. Warner, Attorney General of Massachusetts	14
Opinion of Supreme Judicial Court of Mass.	10

————, Counsel for Appellant.

[fol. 42] [File endorsement omitted.]

Endorsed on cover: File No. 33,778. Massachusetts Probate Court for Worcester County. Term No. 469. Ex Parte: Worcester County National Bank of Worcester, appellant. Filed September 25th, 1928. File No. 33,778.